IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15316 of 2004

Date of Decision: 8.12.2004

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UNION OF INDIA

Versus

AVINASH KUMAR SRIVASTAVA S/O.RADHA RAMAN PRASAD

(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Petitioners M

For the Respondent Mr.Adv.B.A.Vaishnav

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PER: HON'BLE THE CHIEF JUSTICE (ORAL):-

This petition is directed against the order of Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad ( for short "CAT" ) passed in O.A.No.206 of 2004 dated July 22, 2004.

.RS 2.

#. Penalty of reduction to next lower stage in the time scale of pay for two years with further directions that respondent would not earn increments during this period

and on expiry of the period, the reduction shall have the

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Whether reporters of Local Papers may be allowed to see the Judgment?

effect of postponing the future increments, was imposed by the Competent Authority. Respondent sought review thereof unsuccessfully, and thereafter, challenged the same through Original Application No.206 / 2004. It is not in dispute that the Union Public Service Commission (for short "UPSC") was consulted and copy of the advice was enclosed with the final order of punishment.

#. Short question for consideration before CAT was whether non supply of UPSC advice to the respondent enabling him to make representation against the same before final order, would vitiate the proceedings against him. Petitioners depended upon Rule-32 of C.C.S (C.C.A.) Rules, 1965 and say that copy has to be given with final order. CAT considered the matter and set aside the final order on the ground that copy of advice has to be supplied before final order is passed so that the delinquent could make representation against the same. Accordingly, disciplinary authorities have been directed to take decision after receipt of representation from the respondent since copy of the UPSC advice had already been given to him along with final order.

#. Smt.P.J.Davawala submits that petitioners have made compliance of Rule-32 which provides for supply of copy along with final order. This being statutory rule, principles of natural justice cannot be pressed into service by the other side. To press this submission, reliance is placed on UNION OF INDIA V. J.N.SINHA AND ANOTHER [ AIR 1971 SC 40 ]. Another decision on which reliance is placed is ALIGARH MUSLIM UNIVERSITY AND OTHERS V. MANSOOR ALI KHAN [ (2000) 7 SCC 529 ]. There is no quarrel with the proposition that Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. If a statutory provision can be read consistently with the principles of natural justice, the courts should do so. But if a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice then the court cannot ignore the mandate of the legislature or the statuary authority and read into the concerned provision

the principles of natural justice. Similarly, principle of "Useless formality theory" or "Useless formality", In the facts of the case where the result is not going to be changed, irrespective of the notice given. The decision turns on its peculiar facts, conduct of the petitioner disentitling him to invoke equitable jurisdiction of Court under Article 226 of the Constitution of India.

#. Turning to the facts of this case, inquiry is held under CCS (CCA) Rules, 1965. Part-VI of Rule-14 provides procedure for imposing penalties. While Rule-15 action on the inquiry report. It is reproduced :

"15. Action on the inquiry report. - (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing remit the case to the inquiry authority for further inquiry and report and the inquiry authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

[(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government Servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government Servant.

(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government Servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).]

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 11 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such

penalty:

Provided that in every case where it is necessary to consult the commission the record of the inquiry shall be forwarded by the disciplinary authority tot he Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government Servant. [ G.I., M.H.A., (Dept. of Personnel and A.R.) Noti. No.11012 / 2/ 77-Ests. A, dated 16th August, 1978].

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of making representation on the penalty proposed to be imposed :

Provided that in every case where it is necessary to consult the commission, the record of the inquiry shall be forwarded by the disciplinary authority to the commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government Servant."

Proviso to sub-Rule-3 requires that in every case where it is necessary to consult the Commission, report of inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant. Therefore, there is requirement of consulting the Commission. Therefore, advice of Commission cannot be sought by way of formality. It has to be taken into consideration by the competent authority before making any order imposing any penalty on the Government servant. Obviously, copy of the advice of the Commission has to be supplied to the delinquent to enable him to represent. In case it is supplied after order of punishment is passed, there is no need to supply the copy of the advice because it is of no use to the delinquent at that stage.

The question is violation of fair procedure by relying on material which is not supplied to the delinquent. The purpose of supply of document is to contest its veracity or give explanation. It is, at this stage, that there is violation of principles of natural justice vitiating the inquiry. We are not concerned with it nor we intend to examine validity of Rule-32 except making simple observation that, supply of UPSC advice after passing order of punishment is of no use to the delinquent.

#. The decision nearest to the point is STATE BANK OF INDIA AND OTHERS V. D.C. AGGARWAL AND ANOTHER (AIR 1993 SC 1197) followed by us in Special Civil Application No.17549 of 2003 - UNION OF INDIA V. N.M.RAICHURA decided on 12.1.2004.

#. Consequently, we hold that decision of CAT impugned through this Special Civil Application is absolutely correct and is confirmed.

The petition is, therefore, dismissed.

[ Bhawani Singh ]
Chief Justice

Date : 8.12.2004 [ H.K.Rathod ]
Judge

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